



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
999 18TH STREET- SUITE 200
DENVER, CO 80202-2466
Phone 800-227-8917
<http://www.epa.gov/region08>

September 13, 2006

Ref: 8ENF-L

SENT VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

James H. Allen, Manager
Kemco Industries, LLC
1374 East Main Street
Lehi, UT 84043

Re: In the Matter of Kemco Industries, LLC
Docket No. CWA-08-2006-0039
Administrative Complaint and Notice of Opportunity for Hearing

Dear Mr. Allen:

Enclosed is an Administrative Complaint and Notice of Opportunity for Hearing ("Complaint") filed by the U.S. Environmental Protection Agency ("EPA") against Kemco Industries, LLC pursuant to its authority under section 311(b)(6)(B)(i) of the Clean Water Act (the "Act"), 33 U.S.C. §1321(b)(6)(B)(i). EPA alleges in the Complaint that Kemco Industries, LLC's facility in Lehi, Utah is in violation of the oil pollution prevention requirements set forth at 40 C.F.R. part 112 and section 311(b)(6)(A) of the Act, 33 U.S.C. §1321(b)(6)(A).

Specifically, the Complaint alleges that Kemco Industries, LLC, failed to prepare and implement a Spill, Prevention, Control and Countermeasures ("SPCC") plan for its Lehi facility in accordance with 40 C.F.R. §§112.7 and 112.8 as required by 40 C.F.R. §112.3. EPA discovered the violations during an unannounced SPCC inspection of the Kemco facility on June 16, 2005. The Complaint proposes a total penalty of \$23,338 for the alleged violations.

You have the right to a hearing to contest the factual allegations in the Complaint. If you admit the allegations, or the allegations are found to be true after you have had an opportunity for a hearing, you have the right to contest the penalty proposed in the Complaint. A copy of EPA's administrative procedures is enclosed for your review. Please note the requirements for an answer set forth in 40 C.F.R. §§22.15 and 22.38. If you wish to contest the allegations in the Complaint or the penalty proposed in the Complaint, you must file a written answer within thirty (30) days of receipt of the enclosed Complaint with the EPA Regional Hearing Clerk at the following address:

Ms. Tina Artemis, Regional Hearing Clerk (8RC)
U.S. EPA, Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

If you fail to request a hearing, you will waive your right to formally contest any of the allegations set forth in the Complaint. If you fail to file a written answer or pay the proposed penalty within the time limits, a default judgement may be entered pursuant to 40 C.F.R. §22.17. This judgement may impose the penalty proposed in the Complaint.

Whether or not you request a hearing, you may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty. You have the right to be represented by an attorney at any stage of the proceedings, including any informal discussions with EPA, but it is not required. A request for an informal conference does not extend the thirty (30) day period for filing your Answer and/or requesting a hearing.

If you have any questions, the most knowledgeable people on my staff regarding this matter are Richard H. Baird and Jane Nakad. Mr. Baird is in our Legal Enforcement Program and can be reached at (303) 312-6642. Ms. Nakad is in our Technical Enforcement Program and can be reached at (303) 312- 6202.

We urge your prompt attention to this matter.

Sincerely,

Timothy Osag for/

Elisabeth Evans, Director
Technical Enforcement Program
Office of Enforcement, Compliance and
Environmental Justice

Enclosures: Complaint and Notice of Opportunity for Hearing
Consolidated Rules of Practice, 40 C.F.R. Part 22
SBREFA Information Sheet
Notice of SEC Disclosure

cc: Richard H. Baird, Esq., 8ENF-L
Jane Nakad, 8ENF-UFO
Brenda Cazier, 8ENF-PT



**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

IN THE MATTER OF:)	Docket No. CWA-08-2006-0039
)	
Kemco Industries, LLC)	ADMINISTRATIVE COMPLAINT AND
1374 East Main Street)	OPPORTUNITY TO REQUEST
Lehi, UT 84043)	HEARING
)	
Respondent.)	Proceeding to Assess Class I Civil Penalty
)	Under Section 311 of the Clean Water Act

AUTHORITY

1. This is a civil administrative action issued under the authority vested in the Administrator of the Environmental Protection Agency ("EPA") by section 311(b)(6)(B)(i) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. §1321(b)(6)(B)(i), as amended by the Oil Pollution Act of 1990. The Administrator has properly delegated this authority to the undersigned EPA official. This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules") set forth at 40 CFR part 22, a copy of which is enclosed.

GENERAL ALLEGATIONS

2. Kemco Industries, LLC ("Respondent"), is a corporation organized under the laws of, and is authorized to do business in, the State of Utah.
3. Respondent is a "person" within the meaning of sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§1321(a)(7) and 1362(5).
4. Respondent owns and operates a facility that blends and packages oils and lubricants,

such as racing fuels, motor oils, chain oils, gear oils and mineral oils located at 1374 East Main Street, Lehi, Utah (the “Facility”).

5. The Facility includes, but is not limited to, 16 above ground oil storage tanks that range in capacity from 2,000 to 8,000 gallons and a 55 gallon drum oil storage area. The combined capacity of oil storage is approximately 93,000 gallons

6. Racing fuels, motor oils, chain oils, gear oils and mineral oils are all oil within the meaning of “oil” as defined at section 311(a)(1) of the Act, 33 U.S.C. §1321(a)(1).

7. Respondent is engaged in producing, gathering, storing, processing, transferring, distributing, using or consuming oil or oil products at the Facility.

8. Respondent is an “owner and operator” of an “onshore facility” within the meaning of sections 311(a)(6) and (10) of the Act, 33 U.S.C. §§1321(a)(6) and (10).

9. The Facility is a “non-transportation related” “onshore facility” within the meaning of 40 C.F.R. §112.2.

10. The Facility has a total above-ground oil storage capacity greater than 1,320 gallons.

11. Drainage from the facility could flow approximately 1000 feet to an unnamed pond, which flows into Mill Pond and then into Spring Creek which is a tributary to Utah Lake.

12. The unnamed pond, Mill Pond, Spring Creek and Utah Lake are “navigable waters” and “waters of the United States” within the meaning of section 502(7) of the Act, 33 U.S.C. §1362(7) and 40 C.F.R. §110.1.

13. Section 311(j)(1)(C) of the Act, 33 U.S.C. §1321(j)(1)(C), provides that the President shall issue regulations "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil ... from vessels and from onshore and offshore

facilities, and to contain such discharges"

14. EPA promulgated the oil pollution prevention regulations, set forth at 40 CFR part 112.

40 CFR §112.1(b) states that the requirements of part 112 apply:

“to owners or operators of non-transportation related onshore and offshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil or oil products, and which, due to its location, could reasonably be expected to discharge oil in quantities that may be harmful, as described in part 110 of this chapter, into or upon the navigable waters of the United States or adjoining shorelines”

15. The Facility is a non-transportation onshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States (as defined by section 502(7) of the Act, 33 U.S.C. §1362(7), and 40 CFR §110.1) or its adjoining shoreline in quantities that may be harmful by either (1) violating applicable water quality standards or (2) causing a film or sheen or a discoloration of the surface water or adjoining shorelines or causing a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

16. The Facility is subject to the oil pollution prevention requirements of 40 CFR part 112, pursuant to section 311(j) of the Act, 33 U.S.C. §1321(j), and its implementing regulations.

17. 40 CFR §112.3 requires that owners or operators of onshore facilities prepare a Spill Prevention, Control, and Countermeasures (“SPCC”) plan in writing in accordance with applicable sections of part 112, including but not limited to, sections 112.7 and 112.8.

18. Section 311(b)(6)(A) of the Act, 33 U.S.C. §1321(b)(6)(A), states in pertinent part that any owner, operator, or person in charge of any vessel, onshore facility or offshore facility who fails or refuses to comply with any regulation issued under subsection (j) of this section to which that owner, operator, or person in charge is subject, may be assessed a class I or

class II civil penalty by ... the Administrator.

19. On or about June 16, 2005, EPA conducted an unannounced SPCC inspection (the “Inspection”) at the Facility.

20. The following SPCC measures were found to be deficient at the Facility at the time of the Inspection:

- a. No inspections and tests conducted and no records of inspections as required by 40 CFR §112.7(e);
- b. Training of oil handling personnel does not address SPCC Plan requirements and discharge prevention briefings not conducted in accordance with 40 CFR §112.7(f);
- c. Facility not fully fenced in accordance with 40 CFR §112.7(g)(1);
- d. Master flow and drain valves not secured as required by 40 CFR §112.7(g)(2);
- e. Undiked areas with potential for discharge do not drain to pond, lagoon, or drainage basin; no final discharge diversion system alternative in accordance with 40 CFR §112.8(b)(3, 4);
- f. No secondary containment provided for portable tanks or drums in accordance with 40 CFR §112.8(c)(11); and,
- g. Certification of Substantial Harm form not completed and signed in accordance with 40 CFR §112.20(e).

21. The Facility SPCC Plan was reviewed and found to be inadequate as follows:

- a. Not amended following material changes to the facility affecting the potential for a discharge in accordance with 40 CFR §112.5(a);
- b. Appropriate secondary containment for the tank truck unloading area not addressed in accordance with 40 CFR §112.7(c);
- c. Written inspection and test procedures not addressed in accordance with 40 CFR §112.7(e);
- d. Discharge prevention briefings not addressed in accordance with 40 CFR §112.7(f)(3);
- e. Adequate security measures for securing tank master flow and drain valves not

addressed in accordance with 40 CFR §112.7(g)(2);

f. Undiked area drainage to ponds, lagoons, or drainage basins not addressed in accordance with 40 CFR §112.8(b)(3);

g. Final discharge diversion alternative not addressed in accordance with 40 CFR §112.8(b)(4);

h. Engineering of tanks in accordance with good engineering practice to prevent discharges not addressed in accordance with 40 CFR §112.8(c)(8);

i. Removal of accumulated oil in diked areas not addressed in accordance with 40 CFR §112.8(c)(10);

j. Secondary containment for mobile or portable containers not addressed in accordance with 40 CFR §112.8(c)(11); and,

k. Proper design of pipe supports not addressed in accordance with 40 CFR §112.8(d)(3).

22. The Respondent failed to prepare and implement a SPCC plan for the Facility in accordance with the regulations at 40 CFR §112.7 and 112.8 as required by 40 CFR §112.3.

23. Respondent's failure to prepare and implement a SPCC plan in accordance with the regulations at 40 CFR §§112.7 and 112.8 from June, 2005, through and including July, 2006, (a duration of approximately thirteen (13) months) constitutes violations of 40 CFR §112.3 and sections 311(b)(6)(A), 33 U.S.C. §1321(b)(6)(A), and 311(j)(1)(C), 33 U.S.C. §1321(j)(1)(C) of the Act.

PROPOSED PENALTY

24. Based on the foregoing Allegations and pursuant to the authority of section 311(b)(6)(B)(i) of the Act, 33 U.S.C. §1321(b)(6)(B)(i), Complainant proposes the assessment of administrative penalties against the Respondent in the amount of \$23,338.

25. Complainant proposes this penalty amount after considering the applicable

statutory penalty factors in section 311(b)(8) of the Act, 33 U.S.C. §1321(b)(8): Respondent's alleged violations, the seriousness of the violations, the economic benefit to the violator resulting from the violations, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other factors as justice may require.

26. Specifically, the proposed penalty amount is based on Respondent's non-compliance and moderate environmental impact for a duration of a least thirteen (13) months.

TERMS OF PAYMENT FOR QUICK RESOLUTION

If Respondent does not contest the findings and penalty proposal set out above, this action may be resolved by paying the proposed penalty in full pursuant to 40 CFR §22.18. If such payment is made within thirty (30) calendar days of receipt of this Complaint, no Answer need be filed. For more time for payment, Respondent may file a statement agreeing to pay the penalty within 30 days of receipt of the Complaint, then pay the money within 60 days of such receipt.

Payment may be made by means of a cashier's or certified check, or by electronic funds transfer (EFT). If paying by check, the Respondent shall submit a cashier's or certified check, payable to "Environmental Protection Agency," and bearing the notations "OSLTF – 311" and the title and docket number of this case. If the Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

U.S. Environmental Protection Agency
P.O. Box 371099M
Pittsburgh, PA 15251

If the Respondent sends payment by a private delivery service, the payment shall be

addressed to:

Mellon Client Service Center
ATTN: Shift Supervisor
Lockbox 371099M Account 9109125
500 Ross Street
Pittsburgh, PA 15262-0001

If paying by EFT, the Respondent shall transfer \$23,338 to:

Mellon Bank
ABA 043000261
Account 9109125
22 Morrow Drive
Pittsburgh, PA 15235

In the case of an international transfer of funds, the Respondent shall use SWIFT address MELNUS3P.

The Respondent shall submit copies of the check (or, in the case of an EFT transfer, copies of the EFT confirmation) to the following persons:

Tina Artemis, Regional Hearing Clerk (8RC)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

and

Jane Nakad
Technical Enforcement Program (8ENF-UFO)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

Payment of the penalty in this manner does not relieve Respondent of its obligation to comply with the requirements of the statute and regulations. Payment of the penalty in this manner shall constitute consent by Respondent to the assessment of the proposed penalty and a waiver of Respondent's right to a hearing on this matter.

OPPORTUNITY TO REQUEST A HEARING

As provided in the Act, a Respondent has the right to a public hearing to contest this Complaint. If you (1) contest the factual claims made in this Complaint; (2) contest the appropriateness of the proposed penalty; and/or (3) assert that you are entitled to judgment as a matter of law, you must file a written Answer in accordance with sections 22.15 and 22.38 of the Consolidated Rules within 30 calendar days after receipt of this Complaint. Your Answer must (1) clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with regard to which you have knowledge; (2) state circumstances or arguments which are alleged to constitute grounds for defense; (3) state the facts you dispute; (4) the basis for opposing the proposed relief, and (5) specifically request an administrative hearing, if desired. Failure to admit, deny, or explain any material factual allegation in this Complaint will constitute an admission of the allegation.

The Answer and one copy must be sent to:

Tina Artemis, Regional Hearing Clerk (8RC)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466

and a copy must be sent to the following attorney:

Richard H. Baird, Senior Enforcement Attorney (8ENF-L)
U.S. EPA Region 8, Legal Enforcement Program
999 18th Street, Suite 300
Denver, CO 80202-2466
Telephone: (303) 312-6642

IF YOU FAIL TO REQUEST A HEARING, YOU WILL WAIVE YOUR RIGHT TO FORMALLY CONTEST ANY OF THE ALLEGATIONS SET FORTH IN THE COMPLAINT.

IF YOU FAIL TO FILE A WRITTEN ANSWER OR PAY THE PROPOSED PENALTY WITHIN THE 30 CALENDAR DAY TIME LIMIT, A DEFAULT

JUDGMENT MAY BE ENTERED PURSUANT TO 40 CFR §22.17. THIS JUDGMENT MAY IMPOSE THE PENALTY PROPOSED IN THE COMPLAINT.

SETTLEMENT CONFERENCE

The EPA encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and applicable regulations and is willing to explore this possibility in an informal settlement conference. If you or your attorney, if you choose to be represented by one, have any questions or wish to have an informal settlement conference with EPA, please call Richard H. Baird at (303) 312-6642. Please note that a request for, scheduling of, or participation in a settlement conference does not extend the period for filing an answer and request for hearing as set out above. The settlement process, however, may be pursued simultaneously with the administrative litigation procedures found in the Consolidated Rules. If a settlement can be reached, its terms must be expressed in a written consent agreement, signed by the parties and incorporated into a final order signed by the Regional Judicial Officer.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8**
Complainant.

Date: 9/13/06

Timothy Osag for/
Elisabeth Evans, Director
Technical Enforcement Program
Office of Enforcement, Compliance and
Environmental Justice

Date: 13 September 2006

SIGNED
David Janik, Esq.
Supervisory Enforcement Attorney
U.S. EPA, Region 8
999 18th Street, Suite 300 (8ENF-L0
Denver, CO 80202-2466

Date: September 13, 2006

SIGNED
Richard H. Baird, Esq.
U.S. EPA, Region 8
999 18th Street, Suite 300 (8ENF-L0
Denver, CO 80202-2466
Telephone: (303)312-6642
Facsimile: (303)312-6953

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING was hand-carried to the Regional Hearing Clerk, EPA Region 8, 999 18th Street, Suite 300, Denver, Colorado, and that a true copy of the same was sent via certified mail to:

James H. Allen, Manager
Kemco Industries, LLC
1374 East Main Street
Lehi, UT 84043

9/13/06
Date

SIGNED
Judith McTernan

IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS PLEASE CONTACT THE REGIONAL HEARING CLERK.

THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE ON SEPTEMBER 13, 2006.